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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-sixth session

SUMMARY RECORD OF THE 1384th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 14 March 2000, at 10 a.m.

Chairman: Mr. SHERIFIS

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GE.00-41050 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Fourteenth and fifteenth periodic reports of Spain (CERD/C/338/Add.6; HRI/CORE/1/Add.2/Rev.2) (continued)

1. At the invitation of the Chairman, the members of the Spanish delegation resumed their places at the Committee table.

2. The CHAIRMAN invited the delegation to respond to questions asked by members of the Committee at the previous meeting.

3. Mr. PEREZ-HERNÁNDEZ Y TORRA (Spain) said that his delegation was submitting to the Committee a large number of documents in Spanish and other official languages of the United Nations (report on racism, xenophobia and intolerance in Spain; police bulletin on services for foreigners; guide for immigrants; report on municipal services; list of services for the Gypsy population; surveys by the Ministry of Labour and Social Affairs on immigration in Spain and Europe; development plan for the Roma people; immigration indicators for Spain; document on migration and racism; etc.). The quantity of documents demonstrated Spain's deep desire to give the Committee the fullest possible information on its implementation of the Convention

4. Ms. VEVIA ROMERO (Spain) answered a number of questions asked by members of the Committee. On the question of why, in its declaration under article 14 of the Convention, Spain had indicated that it authorized petitioners to transmit communications to the Committee within three months instead of the six months provided for under article 14, paragraph 5, she explained that since there was no Spanish body competent to receive and consider petitions from individuals or groups of individuals who had exhausted local remedies, Spain had deemed it appropriate to enable petitioners to submit communications to the Committee within a period of three months. The purpose of that measure was to do away with legal uncertainty and achieve the desirable level of efficacy. Spain was nevertheless prepared to consider the matter further, together with the Committee, and to take account of any comments it might wish to make.

5. One member of the Committee had mentioned a decision by a higher court that overturned a city ordinance prohibiting the activities of travelling pedlars in which the higher court had found that the ordinance constituted an act of discrimination against Spanish Gypsies. The delegation had no additional information but did wish to point out that the activities of travelling pedlars fell under the exclusive competence of the municipal authorities which, for fiscal, commercial or health reasons, could adopt ordinances applying to everyone, without regard for ethnic group or origin. She did not think that the prohibition of peddling could on the whole be said to constitute discrimination against the Gypsy community, which was subject to the same laws as other groups within the Spanish population.

6. With regard to another question, she referred to two court rulings. In one, the Supreme Court in October 1998 had annulled a sentence of two years' imprisonment imposed by the

competent provincial organ in 1993 on three policemen who had seriously wounded Peruvian nationals. The other had been adopted by the prosecutor's office of Madrid, which had recommended sentences of three to seven years' disciplinary lay-off for nine officers from a Madrid police station who had illegally arrested Hungarian immigrants. An appeal was under way.

7. Concerning shopkeepers who refused to provide services on racial grounds, she indicated that in 1998, the Supreme Court had suspended for one year the licence of an automobile vendor in Murcia province who had refused to deal with a black client. A penalty had thus been imposed for an act based on racial discrimination.

8. Mr. ALBALADEJO CAMPOS (Spain) said that in order to explain the apparent contradictions mentioned by many members of the Committee between the alleged drop in racist incidents and the proliferation of acts of violence by groups of young people motivated by racist and xenophobic ideology, he would provide recent police statistics updating for the period 1998-1999 the information set out in the periodic report. In 1998, 58 cases had been recorded compared with 94 in 1994, a reduction which could not yet be interpreted as a clear trend.

9. Legal statistics showed that increased attention was being paid to offences of a racist or xenophobic nature by the Office of the Public Prosecutor, which had recorded 22 racist offences, a figure that reflected the positive impact of the new Criminal Code and showed that greater efforts were being made to bring to justice the perpetrators of offences motivated by racism, racial discrimination, xenophobia or intolerance.

10. Units trained to investigate the activities of groups with a racist or xenophobic ideology had been set up in the security forces of central State administrations and the major provincial capitals. Their work had enabled the Directorate-General of Police to create files on the activities and identity of those clandestine groups. The special units also monitored the dissemination of racist propaganda over the Internet, and the Office of the Public Prosecutor and the courts had the duty automatically to take action when they were informed of offences of that nature.

11. Existing administrative provisions on registration of associations precluded racist or xenophobic associations, which by definition pursued illegal objectives, from being registered. Organizations already registered which adopted racist objectives and undertook racist activities had to be disbanded. No instance of that kind had occurred in recent years, however.

12. Turning to compensation paid to the victims of violence in El Ejido, he said the State had set up an emergency indemnification system on the basis of an 85-million peseta fund: 84 of the 200 victims had already benefited in the amount of 26 million pesetas.

13. With regard to the Melilla affair when Muslims had been attacked by a group of legionnaires, an accelerated procedure had resulted in the persons accused being sentenced to prison terms and payment of damages.

14. Regarding the training given to national security forces in the context of human rights and the struggle against racist and xenophobic phenomena, he referred the Committee to a document circulated during the meeting which updated the information on that subject in Spain's periodic report and which was specifically based on the Council of Europe statement on the police and the United Nations Code of Conduct for Law Enforcement Officials. The Directorate General of Police had established a service for foreigners and its members received special training.

15. The detention centres for foreigners, whose procedures were governed not by separate provisions but by analogous interpretation of Spanish law, had been the subject of a ministerial order in 1998 setting out the rights of detainees and specifying that the centres functioned in conformity with recommendations formulated by the Ombudsman.

16. Mr. HERNÁNDEZ JIMENEZ (Spain) answered the questions asked by members of the Committee on the situation of the Gypsies in Spain.

17. Concerning the number of Gypsies in the country, he explained that the Spanish Government did not collect statistics on the ethnic composition of the population, but studies regularly carried out for practical purposes by regional bodies, non-governmental organizations (NGOs) and experts provided a certain amount of detailed information. For example, they revealed that the Gypsy population was gradually increasing, partly because of the influx into Spain of Gypsies from European countries such as Bulgaria, Romania and Portugal. They also indicated that a large percentage of Gypsies were disadvantaged in terms of exercise of the rights that they enjoyed as citizens in the fields of education, security, access to employment and lodging.

18. To resolve that problem, the Spanish authorities were carrying out a number of measures under the development plan for the Roma people in Spain, adopted in 1985, in which administrative bodies at the national, Autonomous Community and local levels as well as members of representative Gypsy associations were participating and which was being coordinated by the Ministry of Labour and Social Affairs. The plan comprised integrated social action programmes to combat marginalization and to further the social and cultural advancement of the Gypsies, programmes which had cost the equivalent of US$ 56 million for the period 1998-1999; mechanisms for collaboration with NGOs, including in the implementation of social integration projects in the fields of labour and education and for the promotion of women; plans for the training of professionals working in social and educational programmes to benefit the Gypsy communities; and information campaigns and training activities designed to raise awareness of Gypsy culture in Spain and thereby to promote solidarity and multicultural cohesion.

19. The plan had achieved good results, including full schooling of Gypsy children and a reduction in the rates of school absenteeism, dropping-out and failure; the training of Gypsy women in the area of health; improved access to housing; access to vocational training and study of methods to promote the integration of Gypsies in the labour market; expansion of job opportunities for Gypsies; development of the activities of associations among Gypsies; and improvement of the Gypsy people's image in society and the media through consciousness-raising efforts.

20. Measures had recently been adopted to benefit the Gypsy minority, including the establishment in October 1999 of a parliamentary subcommission responsible for studying the problems of the Gypsies and proposing new measures to benefit that group and the elaboration by a number of Autonomous Communities of programmes for the advancement of the Gypsy people (in Andalusia, Castilla and Léon, Murcia, etc.).

21. Mr. DE OSSORVO ALMECIJA (Spain), replying to questions on whether there had been any changes to legislation on immigration, said that Spanish policy in that area was founded on a political and social consensus which had served as a basis for the new implementing Act No. 4/2000 on the rights and freedoms of foreigners and their social integration. The sole purpose of that legislation was to bring domestic law into line with evolving social reality, i.e. the fact that Spain was no longer a country of transit for immigrants on their way to other countries of the European Union, but a country of destination, a circumstance which called for preventive measures against the racist and xenophobic phenomena of which immigrants were the victims. The new legislation reaffirmed and strengthened Spanish policy in that area, which traditionally fulfilled three main requirements: channelling migration movements, ensuring the social integration of foreigners and combating illegal immigration. That policy was pursued together with the other countries of the European Union and in cooperation with the immigrants' countries of origin.

22. Since 1995, a number of normalization programmes had made it possible in most cases for illegal aliens to obtain an official residence permit. Currently, Act No. 4/2000 should enable some 70,000 to 100,000 immigrants to legalize their situation.

23. Spanish law made no provision for sanctions against transport companies which brought refugees to Spanish territory, such a measure having only been contemplated during drafting of the new Act.

24. As to the situation of Muslims in the Spanish cities of Ceuta and Melilla in North Africa, which the Committee had judged alarming when it had considered Spain's previous periodic report, he said that that population had acquired Spanish citizenship through naturalization and thus enjoyed the same rights as other Spanish citizens. He assumed that the Committee's concern was directed at the situation of a small group of Moroccan citizens who, for historical reasons, had a different but very advantageous status, which most of them had since given up in favour of Spanish nationality.

25. Bilbo Etxezabal, the NGO whose report had been submitted to his delegation by a Committee member, was part of a federation of associations, the FAIN, within which it had participated during the period 1997-1998 in the activities of the Forum for the social integration of immigrants. Although Bilbo Etxezabal was no longer active in the FAIN, the Government was indirectly informed of its proposals and initiatives, of which it took note in an open-minded spirit.

26. Mr. GÓMEZ-LOBO (Spain), referring to the International Labour Organization (ILO) report cited by members of the Committee listing Spain as a country in which job-seekers were discriminated against, said that there was no question that cases of discrimination occurred, but noted that Spain was one of a number of European countries mentioned, along with Belgium, Germany, and the Netherlands. Moreover, the reliability and quality of that survey were questionable.

27. Although employers unofficially screened applicants in prior telephone interviews, turning down certain job-seekers because of their national or ethnic origin without compromising themselves by advertising for other than professional criteria, such employers could henceforth be brought to court, the Act on the rights and freedoms of foreigners in Spain, promulgated on 1 February, stipulating that any measure taken by an employer or his representatives which was prejudicial to an employee for reasons of his foreign status, race, religion or national or ethnic origin constituted a discriminatory act.

28. Replying to the question on the migratory movements of the Roma, he said that the Spanish Gypsy population had become sedentary, lived in cities and did not migrate outside Spain, but that groups of Roma from Portugal and Romania had recently immigrated to Spain to settle there and had applied for reception and welfare assistance in Madrid, Barcelona and Valencia.

29. As for discrimination in housing, he noted that, at the request of the Ombudsman, a number of local administrations had changed their policy so that non-nationals were not discriminated against in access to housing, a right set out in the above-mentioned Act. Of course, it was difficult to combat indirect discrimination for reasons other than those punishable by law.

30. Replying to Mr. Bryde, who had said that according to the president of the biggest association of Moroccan immigrants in Spain, riots similar to those which had taken place in El Ejido might occur elsewhere, he pointed out that the authorities had taken a number of measures to promote the social and cultural development of rural areas, where conflicts were most likely to recur. Those measures consisted in fostering programmes to create adequate housing, devising work programmes geared to market needs, providing for temporary housing consistent with the labour contract and starting negotiations on working conditions.

31. Well before the El Ejido events, the Ministry of Labour and Social Affairs had introduced negotiation and social mediation programmes in the province of Almeria which had not yielded results because they had not been implemented forcefully enough. Since the February riots, emergency administrative action units had been created to produce housing programmes, promote access to low-cost housing and put a labour market recovery programme into place in order to prevent a recurrence of such conflicts.

32. Mr. PÉREZ MEDINA (Spain), commenting on language policy, said in reply to a request for clarification from Mr. Diaconu that according to a survey conducted annually by the Centre for Sociological Research, 43.2 per cent of the Basque population understood Basque and 28 per cent spoke it. As only a minority spoke and understood Basque, the opposite situation of that of Catalan, the Basque educational system was very different from the Catalan

system and offered three types of classes: type A, in which all classes were in Spanish and Basque was a separate subject; type B, in which half the classes were in Basque and half in Spanish; and type C, in which all the classes were in Basque and Spanish was a separate subject. Type A was the least popular: parents were well aware that their children's employment prospects would be better if they mastered both languages.

33. Replying to the Rapporteur's question on the financing of education, he said that each Autonomous Community financed its school system through taxes levied within its confines. The central government did not have a budget for education.

34. One NGO had been cited which had reported a violent incident in Barcelona triggered by a language dispute. That case was entirely exceptional in the Spanish context. Replying to a question by Mr. Valencia Rodriguez, he said that there were no restrictions on the freedom of association or assembly of persons who espoused nationalist opinions. He agreed with Mr. Valencia Rodriguez that the Committee could not take the comments of the above-mentioned NGO at face value. Both the Catalans, who believed that the use of their language was not sufficiently safeguarded by the public authorities, and Spanish-speakers, who felt excluded by the Catalan majority, considered themselves to be discriminated against and employed the same arguments against one another.

35. The number of complaints received by the Ombudsman gave an indication of the discontent in the Catalan-speaking population. In 1998, there had been 3,323 complaints in the Catalan Autonomous Community, this high figure being due to a campaign orchestrated by an NGO. In 1999, there had been no more than 32 for all of Spain, including 20 in the Catalan Autonomous Community of 6 million persons. Since 1990, there had been only eight amparo proceedings involving language questions. Those data suggested that language discrimination was not an issue in Spanish society.

36. In reply to a question by Mr. de Gouttes regarding the constitutionality of the 1998 Catalan Language Policy Act, he said that that legislation had been the subject of protracted negotiations in the Catalan Parliament and that, once promulgated, it had been examined by the central government, which had concluded, as had the Ombudsman, that it was constitutional. It should be pointed out that that Act had been drawn up in a context of declining tensions, after decisions had been taken on 17 cases on language disputes between the central government and the Autonomous Communities and the case-law of the Constitutional Court had become more firmly established. Most schools in the Catalan Autonomous Community were taught in Catalan; that was to be welcomed, because it prevented the emergence of two separate language communities.

37. Mr. Yutzis had said that there could be a gap between the legal framework and social reality. It was a fact that the Catalan Language Policy Act was implemented very cautiously by the Catalan Autonomous Community, where bilingualism and a sense of compromise were deep-rooted, faculties which probably explained the moderation in applying that legislation and the small number of complaints.

38. Mr. BRYDE welcomed the fact that the State party had made a declaration under article 14, but requested it to reconsider its call for the time limit for submission of

communications to be reduced to three months. That time limit was too short for the petitioner, who might not learn of the existence of such a procedure until it was too late; furthermore, as the clause conflicted with rule 19 (f) of the Committee's rules of procedure concerning admissibility of communications, the Committee would be obliged to amend those rules if other States parties were to follow the example of Spain.

39. Mr. YUTZIS said that appropriate legislation was obviously an essential tool in the fight against racial discrimination. That being said, legislation was not a panacea, and there was often a discrepancy between the letter of the law and its application.

40. Reverting to the situation of Moroccan workers in Spain, he said that legislation could do nothing to prevent local communities in areas with high concentrations of immigrants from having a negative perception of them, usually based on social stereotypes that might be exacerbated by economic conditions. It was a well known fact that when the economic situation deteriorated, foreigners were the first to feel the pinch. Surveys conducted by the ILO in Málaga, Madrid and Barcelona had shown that employers, too, were influenced by stereotypes.

41. Government authorities must thus not simply be content to pass legislation: they must also take educational measures to eliminate prejudice. It must not be forgotten that minority groups who were victims of discrimination did not have the means to stand up for themselves in the media, and that it was up to the receiving country to make the necessary effort to help the local population to gain a better understanding of them, to accept their differences and to overcome widespread misconceptions concerning them.

42. Turning to specifics, he drew the Spanish delegation's attention to a presentational matter concerning the report. The fact that the report had a large number of annexes made it difficult to consult. In future, Spain should try to incorporate all the information it submitted into the report itself, so as to make Committee members' work easier.

43. Mr. ABOUL-NASR, reverting to Mr. Bryde's comment, said that Committee members obviously wished States parties to make the declaration under article 14, but that the Committee had never "unanimously requested" a State party to do so, since that would be to overstep its powers. The clause was optional and should remain so. That being said, it was strange that Spain should have made a "reservation" regarding the rules of procedure, a quite unprecedented step, particularly as the provision in question was not mandatory or binding.

44. In her reply, Ms. Vevia Romero had said that the situation of the Roma street traders was a matter for the municipalities, not for central government. That reasoning was unacceptable, as it was the Government and not the municipalities that had acceded to the Convention and was responsible for its application.

45. Mr. SHAHI said he had greatly appreciated the report of Spain and in particular the fact that it concluded with an account of the follow-up to the Committee's suggestions and recommendations. That fact deserved to be commended. However, he noted that in the recommendations it had made in 1996, following its consideration of the thirteenth periodic report of Spain, the Committee had recommended that the next report should contain detailed information on complaints and sentences relating to acts of racial or ethnic discrimination. Yet

in paragraph 42 of the report now before the Committee, Spain merely stated that six cases dealing with racial discrimination as such had come before the courts of Murcia, León, Madrid and Seville, but had provided no details of those cases.

46. Mr. de GOUTTES, endorsing Mr. Bryde's comment concerning the declaration by Spain under article 14, said it would be preferable for Spain to reconsider its declaration and not to break ranks with regard to the time limit of six months provided for in paragraph 5 of article 14.

47. As for the confrontations that had taken place in El Ejido that February, they appeared to be directly linked to the massive influx of Moroccan agricultural workers attracted by the extraordinary economic prosperity of the Almería region. Two questions arose: first, had those incidents influenced the process of regularization of immigrants; and, secondly, had criminal proceedings for racial discrimination been brought in that connection, in addition to any proceedings brought for violence and assault?

48. Ms. JANUARY-BARDILL noted that in paragraph 16 of its report Spain explained that it offered training in the principles of non-discrimination to officials in the public administration. She asked whether there were any monitoring or control mechanisms with which to verify that those officials actually applied the principles they had been taught.

49. She also asked the Spanish delegation to reply to the questions put by Mr. Nobel at the previous meeting concerning the problem of the 170,000 or so persons without documentation, and on whether the airlines that brought prospective immigrants to Spain in the full knowledge that they would have difficulty in regularizing their situation were liable to sanctions.

50. Mr. IÑIGO DE PALACIO (Spain), replying to Mr. Yutzis, said that his country had made great efforts to gather as much information as possible, which accounted for the large number of annexes to the report. However, if that format made the Committee's task more difficult, Spain would endeavour to make its future reports more succinct and easier to consult.

51. He entirely agreed with Mr. Yutzis that immigration problems were exacerbated by the prevailing economic conditions. As a result of rapid economic development, Spain, which had traditionally been a migrant-sending country, was now becoming a net recipient of migrants, and attitudes did not always keep pace with the economy.

52. Local and regional administrations were making efforts to raise public awareness of the issue, but in practice, when a foreigner and a Spaniard came to blows, it was not always easy to establish a "racist connotation", and the simplest course was to focus on the facts, rather than investigating the motive. However, the abundant case law cited in the report and its annex 8 showed that things were changing.

53. With regard to the declaration under article 14, there seemed to him to be no particular purpose or reason for the change to the time limit in paragraph 5, and his delegation would make a point of conveying the Committee's remarks on the matter to the Spanish Government.

54. Replying to Mr. Aboul-Nasr on the question of the Roma street traders, he first noted that by virtue of the principle that "ignorance of the law is no excuse", central government and local

authorities alike had to apply the provisions of the Convention and secure their implementation. If they failed to do so they were sanctioned by the courts. However, the activities of the itinerant street traders were regulated to some extent. They were required to be in possession of an authorization or licence issued by the local authorities or the municipal police, for which they had to pay a fee or tax. In practice, Roma were often sanctioned for trading without a licence or authorization, but that hardly amounted to racism.

55. Turning to the events in El Ejido, he assured Mr. de Gouttes that they had had no influence on the process of regularization of undocumented immigrants. To the best of his knowledge, there were between 70,000 and 100,000 such persons.

56. He explained to Ms. January-Bardill that, although no monitoring and control mechanisms existed as such, senior officials in government administration and bodies such as the Civil Guard took particular care to ensure that their subordinates complied with the rules of conduct. As for the airlines, they were free to choose what passengers they took on board their aircraft, and had never had sanctions imposed upon them.

57. Lastly, he informed Mr. Nobel that the Government had never abdicated its responsibilities with regard to refugees and that Spain applied the conventions on refugees to the letter. One way of seeking refugee status was to apply through the embassies.

58. Ms. VEVIA ROMERO (Spain), replying to Mr. Shahi, said it would be difficult to analyse the six cases referred to in paragraph 42 of the report in any detail. The cases differed greatly, and dealt with immigrants who had been unable to take ship, as well as with acts of violence or provocation directed against Moroccan workers. However, all those cases had resulted in sentences, and it was worth mentioning that establishment of a racist connotation could result in the imposition of a more severe sentence on the offender.

59. Following the events in El Ejido, the police had received 30 or so complaints and had questioned more than 100 Spaniards and Moroccans. More than 40 proceedings were currently pending in connection with that affair.

60. Mr. GOMEZ-LOBO (Spain) replying to Mr. de Gouttes, said that after the incidents which had occurred at El Ejido, measures had been taken to obtain suitable accommodation for the victims: 418 persons had been rehoused in 42 prefabricated units with 22 sanitary units and 15 kitchen units nearby.

61. Those incidents would not set back the process of regularizing the situation of illegal immigrants, which was due to begin on 21 March 2000 and to last for four months. On the contrary, in the most sensitive areas, the administrative authorities had set up additional reception centres for such immigrants and had signed cooperation agreements with NGOs which were responsible for assisting the administration in that operation.

62. Mr. ALBALADEJO CAMPOS (Spain) stated, with regard to the behaviour of members of the security forces, that they and persons who had frequent contact with aliens received initial and in-service training in the fields of human rights and combating racial discrimination. The officers in charge of law enforcement units were under an obligation to discipline staff who, in

the exercise of their functions, engaged in xenophobic or racist behaviour, although admittedly it was often difficult to ascertain whether such reprehensible conduct had been prompted by racist feelings.

63. Mr. RECHETOV (Country Rapporteur) thanked the Spanish delegation for its frank replies to Committee members' questions. The Committee considered that the declaration made by Spain under article 14 of the Convention was accompanied by a reservation.

64. Furthermore, the Committee was concerned by the increasing number of overt displays of xenophobia or racism by the population and authorities and requested information about the steps being taken by the Government to halt that trend. It would be helpful if the State party supplied written rather than oral information about court judgements on that subject, as it had done, so that the Committee could study the material in greater depth.

65. It was to be noted that the Government had made a great effort to improve the situation of Gypsies. Nevertheless, no statistics existed on that sector of the population. The Committee hoped that the State party would remedy that state of affairs in its next periodic report.

66. The Committee would observe with interest the implementation of the new Aliens Act, which ought to make it possible to legalize the status of many foreigners.

67. Similarly, it would attentively monitor the situation in the future with regard to racial discrimination when it came to finding a job or housing and in respect of linguistic discrimination.

68. He said that, on the whole, the Committee was satisfied with the dialogue with the Spanish delegation and invited the State party, when it submitted its next report, to supply a more comprehensive document containing precise data on the ethnic composition of the population and on the economic circumstances of the various groups in question.

69. Mr. PEREZ-HERNÁNDEZ Y TORRA (Spain) said that the members of his delegation had taken due note of the Committee's observations and questions and that his Government would do its best to respond to them in Spain's next report. Endeavours would likewise be made to improve the presentation of the report in accordance with the Committee's wishes. He stressed that Spanish society was very active in defending human rights in all fields, especially where the protection of refugees was concerned. Lastly, he announced that the Government was willing to cooperate in trying to solve the problems raised.

70. The CHAIRMAN thanked the delegation for its constructive attitude and open-mindedness and welcomed the State party's desire to pursue the dialogue. The Committee had therefore completed its consideration of the fifteenth periodic report of Spain.

71. The Spanish delegation withdrew.

Fourteenth periodic report of Tonga (CERD/C/362/Add.3)

72. The CHAIRMAN said that the Committee would examine the State party's report in the absence of a delegation.

73. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) said that the Committee could understand why the Kingdom of Tonga might have difficulty in sending a delegation. The country had submitted its report on time, thus exhibiting a praiseworthy promptness. In drawing up its report, it had based itself on the comments made by the Committee when the previous report had been considered. That positive attitude could only enrich the dialogue with the Committee.

74. It was to be noted that the exercise of fundamental rights by both nationals and non-nationals was still guaranteed by the Constitution, since no law or amendment infringing those rights had been adopted.

75. It was not enough to assert that the current legislative, judicial, legal and administrative framework in Tonga provided for the implicit implementation of the Convention, in that the State party neither practised nor encouraged racial discrimination. It was essential from a legal and a practical point of view that specific legislative texts be adopted. The Committee therefore again invited the State party to pass legislation giving effect to the provisions of the Convention.

76. No action had been taken on the Committee's recommendation that the State party should adopt laws giving effect to article 4 of the Convention. The State could not claim that discrimination was non-existent because no court case dealing with that subject had been reported, since the explanation for that situation might be that the population did not know its rights in that connection or that there was no specific legislation. That being so, it was fortunate that no organization which practised or encouraged racial discrimination or incited racial hatred existed in Tonga. The Committee therefore again recommended that the State party should pass laws permitting the implementation of article 4 of the Convention and, at the same time, pointed out that that was an obligation incumbent on States parties to the Convention.

77. As far as the implementation of article 5 of the Convention was concerned, a number of rights set forth therein were secured by constitutional provisions or administrative practice. The Committee would, however, have liked to know how provisions relating to those rights were actually implemented.

78. In that connection, the Committee was pleased to note the provisions on the rights to vote, to stand for election and to leave the country. He asked whether the authorization that non-Tongans had to obtain if they wished to marry a Tongan was automatically granted if the non-Tongan had complied with the requirements of the administrative authorities. Furthermore, he wished to know if that authorization was given without discrimination on grounds of ethnicity or nationality.

79. Why could non-Tongans not buy land and why were naturalized Tongans not entitled to hereditary tax concessions under article 29 of the Constitution? Did that discrimination equally affect all naturalized foreigners? Moreover, the inferior status of women in Tonga was worrying.

80. The Committee welcomed the fact that the State party had agreed to incorporate the provisions of the Convention in its domestic law. It was happy to learn that a census had been conducted in 1996 which had confirmed the existence of persons belonging to different ethnic or national groups, although the majority of the population was of Polynesian descent.

81. Turning to the obligation to provide a core document, the Committee could not regard the current report as such, for it did not contain the information required by the consolidated guidelines concerning the first part of the reports that States parties had to submit in pursuance of the various human rights instruments.

82. The Committee noted with satisfaction that the State party was prepared to avail itself of the assistance of the Office of the United Nations High Commissioner for Human Rights.

83. Moreover, the Committee hoped that the State party would ratify the amendment to paragraph 6 of article 8 of the Convention.

84. The Committee could only recommend that States parties should make the declaration provided for in article 14 of the Convention, but that decision was up to them.

85. Mr. de GOUTTES hailed the efforts made by the State party to submit its report, despite the country's limited resources. He endorsed the comment of Mr. Valencia Rodriguez that the Kingdom of Tonga should adopt specific legislation permitting the implementation of the provisions of the Convention. He also said that the provisions on marriage were inconsistent with article 5 (d) (iv) of the Convention.

86. The CHAIRMAN agreed with the remarks of the previous two speakers and acknowledged the efforts made by the State party. The Committee had completed its consideration of the fourteenth periodic report of Tonga.

The meeting rose at 1.05 p.m.